

HOUSE BILL 2290
By McMillan

AN ACT to amend Tennessee Code Annotated,
Title 71, Chapter 2, regarding
prescriptions for the elderly.

BE IT ENACTED BY THE GENERAL ASSMEBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 2, is amended by adding as
a new Part 5 the following language:

Section 71-2-501. It is the intent of the legislature that there shall be created a
state pharmaceutical assistance program within the meaning of federal law at 42 U.S.C.
§1396r- 8(c)(1)(C)(i)(III), to be known as "SPAP" to provide certain pharmaceutical
benefits to certain elderly and disabled residents of Tennessee, and to facilitate
coordination of benefits between the SPAP and the new Medicare Part D drug benefit
program established by the Medicare Modernization Act, as well as enrollment of such
individuals in said program. This SPAP will assist eligible elderly and disabled
individuals, including individuals qualified as dual eligibles by virtue of their eligibility for
receipt of benefits under both the Medicaid and Medicare programs, in defraying the cost
of medically necessary prescription drugs through coordination with the Medicare Part D
drug benefit program.

Section 71-2-502. As used in this part, unless the context otherwise requires:

(1) "Asset Test" means the asset limits as defined by the Medicare
Prescription Drug Act of 2003.

(2) “Contractor” shall mean the person, partnership or corporate entity which has an approved contract with the Department to administer the pharmaceutical assistance program as established under the act and this part.

(3) “Department” means the bureau of TennCare within the Department of Finance and Administration.

(4) “Enrollee” shall mean a resident of Tennessee who meets the conditions specified herein as well as the Department regulations relating to eligibility for participation in SPAP and whose application for enrollment in the SPAP has been approved by the Department.

(5) “Federal Poverty Guidelines” means the federal poverty guidelines updated annually in the federal register by the United States Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2).

(6) “Medicaid Dual Eligible” or “dual eligible” means a person who is eligible for Medicare and Medicaid as defined by the Medicare Modernization Act.

(7) “Medicare Modernization Act ” or “MMA” means the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(8) “Medicare Part D prescription drug benefit” means the prescription benefit provided under the Medicare Modernization Act, as it may vary from one PDP to another.

(9) “Liquid Assets” means assets used in the eligibility determination process as defined by the MMA.

(10) “Participating Pharmacy” shall mean a pharmacy that elects to participate as a pharmaceutical provider and enters into a participating network agreement with the Department.

(11) “Prescription Drug Plan” or “PDP” means non-governmental drug plans under contract with the Center for Medicare and Medicaid Services to provide prescription benefits under the Medicare Modernization Act.

(12) “Resident” means a person who has lived within Tennessee for a period of at least 90 consecutive days and who meets the conditions as set forth in this part relating to residence provisions. An individual is a Tennessee resident until the individual establishes a permanent residence outside of Tennessee.

Section 71-2-503. (a) The SPAP may designate or select one or more CMS-approved Prescription Drug Plans as preferred plans for purposes of the coordination of benefits between the SPAP and the Medicare Part D drug benefit.

(b) To ensure Medicare eligible individuals receive a coordinated benefit, the SPAP may preliminarily enroll or re-enroll beneficiaries of the SPAP into a preferred Prescription Drug Plan or Plans in the absence of any action or application of the individual beneficiary seeking such enrollment, provided that each individual so enrolled shall be informed of the following:

(1) the procedures by which the individual may disenroll from the preferred PDP;

(2) the existence of an alternative PDP or PDPs authorized to provide Medicare Part D benefits in the region in which the individual resides;

(3) the means through which the individual may change his enrollment to an alternative, non-preferred PDP or may obtain assistance in doing so; and

(4) that enrollment in a non-preferred PDP will not adversely affect either the individual’s eligibility for enrollment in the SPAP or the amount of benefits he or she may be eligible to receive from the SPAP. The above enrollment authority

shall also include the authority to disenroll individuals from non-preferred plans in order to maximize the benefit to the individual.

Section 71-2-504. (a) The SPAP shall coordinate prescription drug coverage with the Medicare Part D prescription drug benefit, including related supplies as determined by the Department, to each person to whom all of the following apply:

(1) The person is a resident of Tennessee and is (i) 65 years of age or older, or (ii) is disabled and receiving a social security benefit and is enrolled in the Medicare program;

(2) The person has a household income at or below 150% of the Federal Poverty Guidelines;

(3) The person meets the Asset Test as established by the Medicaid Modernization Act;

(4) The person is not a member of a Medicare Advantage Plan that provides a prescription drug benefit; and

(5) The person is not a member of a retirement plan that is receiving a benefit under the Medicaid Modernization Act.

(b) The Department shall give initial enrollment priority to the Medicaid dual eligible population. A second enrollment priority will be afforded to Medicare eligible applicants with annual household incomes up to 150% of the Federal Poverty Guidelines which also meet the Asset Test. Enrollment for Medicaid dual eligible persons shall take effect no later than October 1, 2005. Medicaid dual eligible persons may be automatically enrolled into the SPAP, with the provision that they may opt out of the SPAP program if they so choose. The Department shall determine the procedures for automatic enrollment in, and election out of, the SPAP. Applicants meeting the

qualifications set forth herein may begin enrolling into the program as determined by the Department.

(c) An individual or married couple meeting the eligibility requirements in subdivision (a) who are not Medicaid dual eligible persons may apply for enrollment in the SPAP program by submitting an application to the Department or the Department's designee, that attests to the age, residence, household income, and liquid assets of the individual or couple.

Section 71-2-505. (a) In providing program benefits, the Department may do one or all of the following:

(1) Enter into a contract with one or more prescription drug plans to coordinate the prescription benefits of the SPAP and the Medicare Part D prescription benefit.

(2) Require that pharmaceutical manufacturers provide Medicaid level, or greater, rebates in order for the manufacturer's products to be available to the enrollees of the SPAP. These rebates must be no less than those provided to Medicaid under Section 1927 of title XIX of the social security act, 42 U.S.C. § 1396r-8.

(3) Preliminarily enroll beneficiaries into a preferred Medicare Part D plan, with an opt out provision for the individual. Individuals that opt out of the preferred PDP will remain enrolled in the SPAP program unless they choose to disenroll from the SPAP.

(4) Prescribe the application and enrollment procedures for prospective Enrollees in the SPAP.

(5) Select, in accordance with applicable procurement laws, a contractor to assist in administration of the SPAP or negotiate SPAP administrative functions with preferred PDP plans.

(b) Program benefits shall begin January 1, 2006. For persons meeting the eligibility requirements of this part, the SPAP may pay all or some of the deductibles, co-insurance payments, premiums and co-payments required under the Medicare Part D pharmacy benefit program.

Section 71-2-506. (a) The program established in this part is not an entitlement. Benefits are limited to that which is specifically appropriated in the General Appropriations Act.

(b) The program is the payor of last resort, and is meant to cover costs for participants that are not covered by the Medicare Part D program.

(c) Except for dual eligibles during the transition period during which they are being moved from Medicaid to a Medicare Part D program, applicants who are qualified for coverage of payments for prescription drugs under a public assistance program (other than MMA benefits) are ineligible for SPAP as long as they are so qualified.

(d) Applicants who are qualified for full coverage of payments for prescription drugs under another plan of assistance or insurance are ineligible to receive benefits from the SPAP as long as they are eligible to receive pharmacy benefits from such other plan.

(e) Applicants who are qualified for partial payments for prescription drugs under another insurance plan are eligible for SPAP, but may receive reduced assistance from SPAP.

Section 71-2-507. (a) Except as otherwise provided in this part, a resident is a person who has lived in Tennessee for a period of at least 90 consecutive days

immediately preceding the date the applicant's application to participate in SPAP is received by the Department. The applicant shall have or intend to have a fixed place of abode in Tennessee, with the present intent of maintaining a permanent home in Tennessee for the indefinite future. The burden of establishing proof of residence within Tennessee is on the applicant. Included in this section are persons residing in long-term care institutions located within Tennessee.

(b) Documentation of residence. The Department shall create standards for documenting proof of residence in Tennessee. Documents used to show proof of residence shall show the applicant's name and a Tennessee address.

Section 71-2-508. Except to the extent expressly limited hereby, the Department has the authority to promulgate rules and regulations, including benefit limits and administrative responsibilities, as may be necessary to implement the SPAP. Such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

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